

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

LORI KAY HAVELOCK,

Debtor.

MICHAEL D. BUZULENCIA, TRUSTEE, *

Plaintiff,

vs.

LORI K. HAVELOCK, et al.,

Defendants.

CASE NUMBER 00-40073

ADVERSARY NUMBER 00-4161

O R D E R

The matters before the Court are (1) the motion of Defendant Countrywide Home Loans, Inc. ("Defendant Countrywide Home") to reinstate the case to the active docket (the "Motion to Reinstate the Adversary Proceeding") and (2) the motion of Defendant Countrywide Home to strike the motion for summary judgment or, in the alternative, to extend the response deadline under Federal Rule 56(f) (the "Motion to Strike"). No responses were filed. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(E), (F), (K) and (O). The following

constitutes the Court's findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

On December 22, 2000, Plaintiff/Trustee Michael D. Buzulencia ("Plaintiff") filed a complaint (the "Adversary Proceeding") seeking a determination regarding the validity, priority, and extent of all liens and encumbrances and other interests against real property located at 639 East Eighth Street, Salem, Ohio. Although the Court never entered an order on the docket staying this Adversary Proceeding pending the decision of the Supreme Court of Ohio in *In re Stewart*, 761 N.E.2d 45, 94 Ohio St. 3d 1427 (2002), the record suggests that the Court orally ordered such a stay. This Adversary Proceeding was inactive for eight (8) months, from November 26, 2001 to July 29, 2002, until Defendant Countrywide Home filed the Motion to Reinstate the Adversary Proceeding. That motion provides that the Court stayed this Adversary Proceeding in April 2002 pending the decision of the Ohio Supreme Court in the *In re Stewart* matter. In addition, it was this Court's practice to stay adversary proceedings that addressed the validity of one witness mortgages pending the outcome of *In re Stewart* because the Supreme Court's decision in that case was to address the legal standard by which such an adversary proceeding should be decided.

Based on this record, the Court recognizes that an oral order staying this proceeding likely occurred.¹

On July 24, 2002, the Ohio Supreme Court decided the *In re Stewart* case.² Accordingly, on July 29, 2002, Defendant Countrywide Home filed the Motion to Reinstate the Adversary Proceeding. Over one year later, on October 20, 2003, Plaintiff filed a motion for summary judgment. In response, Defendant Countrywide Home filed the Motion to Strike, asserting the motion for summary judgment was improper because the Court never entered an order officially reinstating the Adversary Proceeding. In addition, the Motion to Strike requests an additional sixty (60) days to obtain an affidavit, pursuant to Federal Rule of Bankruptcy Procedure 7056(f), because a certain witness will likely be hard to locate.

Recognizing that the pertinent decision of *In re Stewart* has been rendered, to the extent procedurally necessary, the Court grants Defendant Countrywide Home's Motion to Reinstate the Adversary Proceeding. Since it is not clear whether the Court ever, in fact, orally stayed this Adversary Proceeding, the Motion to Reinstate the Adversary Proceeding may be moot.

¹From the time the Adversary Proceeding was filed until January 4, 2004, Judge William T. Bodoh presided over this Adversary proceeding. However, Judge Kay Woods currently presides and, therefore, cannot attest to a prior oral ruling.

²*In re Stewart* considered whether Ohio Revised Code § 5301.234 can be applied to presume the validity of a mortgage in a bankruptcy case filed after the effective date of the statute, when the mortgage at issue in the bankruptcy case was recorded before the statute's effective date and the Court decided in the affirmative. *Id.*

In that event, the Court may consider the motion for summary judgment.

The Court denies Defendant Countrywide Home's Motion to Strike because this Adversary Proceeding has either been reinstated or was never stayed and therefore, Plaintiff's motion for summary judgment is appropriate. The Court finds Defendant Countrywide Home's request for an additional sixty (60) days to obtain an affidavit reasonable and, pursuant to Bankruptcy Rule 7056(f), the Court grants the request. Defendant Countrywide Home has seventy-five (75) days from the date of this order to file a reply to Plaintiff's motion for summary judgment and Plaintiff has seven (7) days to respond to any reply.

IT IS SO ORDERED.

**HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing order was placed in the United States Mail this _____ day of January, 2005, addressed to:

MICHAEL D. BUZULENCIA, ESQ., 150 East Market Street, Suite 300, Warren, OH 44481.

FREDERIC P. SCHWIEG, ESQ., 2705 Gibson Drive, Rocky River, OH 44116.

LORI KAY HAVELOCK, 639 East Eighth Street, Salem, OH 44460.

ROBERT A. CIOTOLA, ESQ., 4590 Boardman-Canfield Road, Suite B, Canfield, OH 44406.

DAVID A. FREEBURG, ESQ., 1370 Ontario Street, Suite 1700, Cleveland, OH 44113.

SAUL EISEN, United States Trustee, BP America Building, 200 Public Square, 20th Floor, Suite 3300, Cleveland, OH 44114.

JOANNA M. ARMSTRONG